

FILED

January 30 2013

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 07-0016

FILED

JAN 30 2013

IN RE ADDING TO THE MONTANA RULES OF)
APPELLATE PROCEDURE A RULE ON JUDICIAL)
WAIVER APPEALS)

O R D E R

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

In November of 2012, the People of the State of Montana approved by referendum the Parental Notice of Abortion Act of 2011. That Act provides, in pertinent part, that this Court may adopt rules providing for an expedited confidential appeal by a petitioner if the youth court denies a petition for a waiver of the parental notification requirement. The Office of the Appellate Defender (OAD) has proposed a rule to be added to the Montana Rules of Appellate Procedure to address expedited confidential appeals in such matters.

IT IS ORDERED that, for 60 days following the date of this Order, public comments will be accepted on the attached proposed rule on judicial waiver appeals. Persons wishing to make such comments shall file their comments, in writing, with the Clerk of this Court. Following the expiration of the public comment period, the Court will take such further action as it deems appropriate.

This Order and the attached proposed rule shall be published on this Court's website. The Clerk is directed to provide copies of this order to OAD and to the State Bar of Montana, with the request that the State Bar provide notice of, and a link to the text of, the proposed rule on its website and in the *Montana Lawyer*.

DATED this 29th day of January, 2013.


Chief Justice

PROPOSED NEW MONTANA RULE OF APPELLATE PROCEDURE

JUDICIAL WAIVER PETITION MCA 50-20-232

Judicial waiver appeals.

- (1) **Scope.** This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age 16 to waive parental notice of an abortion, pursuant to section 50-20-232. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule.
- (2) **Notice of appeal.**
 - (a) A minor may appeal an order denying or dismissing a petition to waive parental notice by filing a notice of appeal with the clerk of the supreme court. The notice of appeal may be filed in person, by mail, or by fax. If a transcript or written order is available, it should be attached to the notice of appeal, but such notice shall not be defective if it does not include such transcript or order.
 - (b) If a notice of appeal is incorrectly filed in a youth or district court, the clerk thereof shall immediately notify the clerk of the supreme court of such filing, and shall transmit a copy of the notice of appeal by fax or e-mail for filing with the supreme court.
 - (c) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.
 - (d) Blank notice of appeal forms and copies of these rules will be available at all court locations and will be mailed, emailed, or faxed to a minor upon request.
 - (e) No filing fees or fee for any service may be required of a pregnant minor who files an appeal under this provision.
- (3) **Record on appeal; standard of review.** A youth court that conducts proceedings under section 50-20-232 shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained. The record on appeal consists of the confidential record of the youth court, including all papers and exhibits filed in the youth court, the written findings and conclusions of the youth court, and, if available, a recording or transcript of the proceedings before the youth court. If the appellant has counsel, counsel shall serve the clerk of the youth court with a copy of the notice of appeal, request the record from the clerk of the youth court, and arrange for expedited preparation of the transcript immediately upon filing the notice of appeal. If the appellant does not have counsel, the clerk of the supreme court shall request the record immediately upon receiving notice that a self-represented minor

has filed a notice of appeal, and the clerk of the youth court shall arrange for expedited preparation of any transcript directly with the court reporter. Upon receiving a request for the record from counsel for the appellant or from the clerk of the supreme court, the clerk of the youth court shall forthwith transmit the record to the supreme court by fax, e-mail, overnight mail or in another manner that will cause it to arrive within 48 hours, including weekends and holidays, after the youth court's receipt of the request for the record. The appellant may supplement the record presented in the youth court.

- (4) **Brief.** A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal within 48 hours, including weekends and holidays, after filing the notice of appeal.
- (5) **Oral argument.** If the court determines to hold oral argument, it will be held within 72 hours, including weekends and holidays, after the notice of appeal is filed. If the court elects to hold oral argument, the appellant, on her request, shall be given the opportunity to address the court directly. This will assist the court in determining whether the appellant is competent to decide whether to have an abortion. Such participation may be by telephone at court system expense.
- (6) **Disposition.** The supreme court may designate a panel of five or more of its members to consider the appeal. The supreme court shall review the decision of the youth court de novo. The supreme court shall enter an order stating its decision immediately after oral argument or, if oral argument is not held, within 72 hours, including weekends and holidays, after the date the notice of appeal is filed. The supreme court shall issue an opinion explaining the decision as soon as practicable following entry of the order.
- (7) **Constructive order.** If the supreme court fails to enter an order within 72 hours, including weekends and holidays, after the clerk of the supreme court receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within 72 hours, including weekends and holidays, after the appeal was docketed; and (2) the failure to enter an order constitutes a constructive order of the court authorizing the minor to undergo an abortion without notice to a parent, guardian, or custodian.
- (8) **Confidentiality.**
 - (a) Documents, proceedings, oral arguments, and audio or video recordings in an appeal under this rule are sealed. All persons are strictly prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, and from disclosing this information to any person. The court shall not release the name of, or any other identifying information concerning, a minor who files a judicial waiver appeal.
 - (b) All statistical and general information that the court system may have concerning judicial waiver appeals is confidential, except the number of appeals filed, granted, and denied statewide each year is public information.

- (9) **Attorney.** If the minor is not represented by an attorney, the clerk of the supreme court shall appoint the office of the state public defender to represent the minor in the appeal. If counsel was assigned to represent the minor in the youth court, the appointment continues through the appeal.
- (10) **Filing defined.** For purposes of this rule only, an appeal is deemed filed at the time and on the date it is received by the clerk of the supreme court.
- (11) **Special rule for interpreting time requirements.** If the end of a time limit set out in this rule falls upon a weekend or holiday, then the time limit is extended to noon on the next business day.